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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,754	07/06/2001	Keith D. Allen	R-372	4570

7590 01/29/2002

DELTAGEN, INC.  
1003 Hamilton Avenue  
Menlo Park, CA 94025

EXAMINER

PAPPU, SITA S

ART UNIT	PAPER NUMBER
1632	5

DATE MAILED: 01/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/900,754	ALLEN ET AL.
	Examiner	Art Unit
	Sita Pappu	1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-23 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

Art Unit: ~~1632~~ 1636**DETAILED ACTION**

Claims 1-23 are pending in the instant application.

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, 17-22, drawn to a targeting construct, and a method of producing a targeting construct, a non-human transgenic animal, a transgenic mouse comprising a disruption in a tryptase gene and a method of identifying an agent that modulates the expression and/or function of tryptase, a transgenic mouse with decreased body weight and decreased thymus weight and a method of identifying an agent that ameliorates a phenotype associated with a disruption in a tryptase gene, classified in class 800, subclass 3.
- II. Claims 16, 23 drawn to an agent that modulates expression of tryptase gene disruption-associated phenotype of a transgenic mouse, classified in class 530, subclass 300+.

The inventions are distinct, each from the other because of the following reasons:

Invention I is drawn to a nonhuman transgenic animal and/or a transgenic mouse comprising a disruption in a tryptase gene and a method of identifying an agent that modulates the expression and/or function of tryptase, a transgenic mouse with decreased body weight and decreased thymus weight and a method of identifying an agent that ameliorates a phenotype associated with a disruption in a tryptase gene, using the transgenic animal, and, thus, involves methods that are distinct from those of

Invention II. The methods of Invention I involve procedures that are materially different from those of Invention II.

Invention II is drawn to a product-by-process claim and thus distinct from Invention I.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to attorney Robert Driscoll on January 11, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sita S Pappu whose telephone number is (703) 305-5039. The examiner can normally be reached on Mon-Fri (9:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel can be reached on (703) 305 1998. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746 7442 for regular communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group patent analyst, whose telephone number is (703) 305 2982.

S. Pappu  
January 15, 2002

*Anne-Marie Baker*  
ANNE-MARIE BAKER  
PATENT EXAMINER